

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 8, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

PSF: 09HD-044

HAWAII

Withdrawal from Governor's Proclamation dated January 3, 1923
and Reset-Aside to the Department of Transportation for Public
Highway Purposes; Issuance of Immediate Construction and
Management Special Use Permit, Piihonua, South Hilo, Hawaii;
TMK: 3rd/ 2-6-18:04 por. and 2-6-18:10 por.

CONTROLLING AGENCY:

Division of Forestry and Wildlife, Department of Land and Natural Resources.

APPLICANT:

Department of Transportation, State of Hawaii.

LEGAL REFERENCE:

Sections 171-11, 183-11, and 183-12 Hawaii Revised Statutes, as amended, and Sections
104-20 and 105-5(1), Hawaii Administrative Rules, as amended.

LOCATION:

Portion of the Government Lands of Piihonua situate at Piihonua, South Hilo, Hawaii,
identified by Tax Map Keys: 3rd/ 2-6-18:04 por. and 2-6-18:10 por., as shown on the
attached maps labeled Exhibits A and B.

TMK/ ZONING/ AREA/ ENCUMBRANCE:

| TAX MAP KEY | ZONING | | AREA (Acres) | ENCUMBRANCE |
|----------------------------------|--------------|----------------|-----------------|---|
| | LUC | CZO | | |
| 3 rd / 2-6-18: 4 por. | Conservation | Forest Reserve | 31,484.897 | Proclamation No. 37; DOFAW |
| | | | | General Lease No. S-5365; Wailuku River Hydroelectric Ltd. |

| TAX MAP KEY | ZONING | | AREA (Acres) | ENCUMBRANCE |
|-------------------------------------|--------------|----------------|-----------------|--|
| | LUC | CZO | | |
| | | | | Land Office Deed No. 28,756; Verizon Hawaii, Inc. |
| 3 rd /2-6-18: 10 por. | Conservation | Forest Reserve | 3,241 | Proclamation No. 37; DOFAW |

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

TMKs 3rd/2-6-18:04 (Parcel 4) and 2-6-18:10 (Parcel 10) are part of the Hilo Forest Reserve under Governor's Proclamation No. 37 of January 3, 1923 and managed by the Division of Forestry and Wildlife. Pursuant to Section 105-5(1), Hawaii Administrative Rules, Parcel 4 is also designated as the Hilo Restricted Watershed. Additionally, a portion of Parcel 4 is encumbered by a grant of easement to Wailuku River Hydroelectric Ltd. under General Lease No. S-5365 to maintain a hydroelectric power plant and related structures and facilities, none of which will be impacted by the road realignment. A portion of Parcel 4 is also encumbered by an easement for communications lines, and Hawaiian Electric Light Company, Inc. has electrical transmission lines and poles on the parcel near the existing Saddle Road.

PURPOSE:

The Department of Transportation is requesting the set-aside of the subject land for public highway purposes.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The final Environmental Impact Statement (EIS) was announced in the Federal Register on September 3, 1999 and in Hawaii's Office of Environmental Quality Control's Environmental Notice on September 8, 1999. A Record of Decision finalized on October 30, 1999 presented the selection of the recommended alternatives by the agencies and formalized the mitigation commitments. The governor accepted the EIS on November 12, 1999. A Supplemental EIS was published in OEQC's Environmental Notice on December 8, 2007 for the Mamalahoa Highway to Milepost 42 section of Saddle Road.

On February 13, 2009, the Board of Land and Natural Resources approved Conservation District Use Permit HA-3483 covering the Saddle Road improvements between mileposts 19 and 11 and the subdivision of the land.

APPLICANT REQUIREMENTS:

- 1) Process and obtain subdivision at Applicant's own cost;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain the written concurrence of the Division of Forestry and Wildlife to the withdrawal of the subject land from Governor's Proclamation dated January 3, 1923; and
- 4) Comply with the conditions of Conservation District Use Permit HA-3483.

REMARKS:

The Saddle Road realignment project is a partnership of federal and State agencies to upgrade and modernize Saddle Road from its junction with Mamalahoa Highway in South Kohala to milepost 6 in South Hilo, a distance of approximately 48 miles. The purpose of the project is to provide safe and efficient travel between East and West Hawaii. After completion of construction, the State Department of Transportation (DOT) will operate and maintain the new highway. Two phases of the realignment have been completed extending between mileposts 19 and 35, and a third phase is under construction north of Pohakuloa Training Area.

By memorandum dated April 6, 2009, DOT's director, Brennon T. Morioka, requested the set-aside of the State lands within the "Saddle Road – East Side Milepost 19 to 11 Project" to DOT, as well as the issuance of an immediate construction right-of-entry. The memorandum explains that DOT's legal possession of the right-of-way needs to be secured by late May 2009 in order to comply with federal funding requirements for the project.

DOT's memorandum indicates that a right-of-way map showing the square footage for the project is currently in the process of being finalized, reviewed and approved. Due to the time constraints involved, DOT submitted the most recent maps available, Roadway Plan and Profile dated February 9, 2009. DOT explains that it will forward right-of-way maps to DLNR as soon as they are available. DOT's application for the set-aside indicates that the estimated area of the set-aside is approximately 73.36 acres on Parcel 4 and 109.04 acres on Parcel 10, the final area to be determined by survey.

Based on staff's review of the Roadway Plan and Profile, it appears that the new highway right-of-way is planned to be approximately 200 feet wide, although the width of the paved road surface will be approximately 52 feet. The 200-foot right-of-way width is required for grading and road engineering purposes. The new highway right-of-way will follow the corridor of the existing Saddle Road, and will generally overlap the existing Saddle Road. Where the new road right-of-way does not overlap the existing Saddle Road, the project calls for the excluded road fragments to be obliterated with those portions resuming their status as forest reserve areas.

DOT's requested right-of-way will also encompass portions of existing utility lines that run parallel to Saddle Road in this area and meander in and out of the right-of-way for the new road. DOT has advised staff that the new road construction will not cause the relocation of any existing utility poles, transmission lines, guy wires or anchors.

Hawaiian Electric Light Company, Inc. (HELCO) has two sets of electric transmission lines and utility poles on Parcel 4. The earlier transmission line (69KV) was erected in 1957 before the environmental assessment and conservation district laws came into effect. The later line (138 KV) was erected in 1987 after a Final EIS and pursuant to Conservation District Use Permits HA-1554, HA-1554A, and HA-1904. Easements for these transmission lines and supporting guy wires and anchors were approved by the Board at its meeting of January 24, 1986, Item F-2, as amended at its meeting of April 12, 1996, Item D-6. However, the easement instrument has not issued because HELCO has not provided staff with completed surveys of the transmission lines. Staff is communicating with HELCO to determine whether the surveys and easement instrument can be finalized before right-of-way is formally set aside to DOT.

Additionally, by Land Office Deed No. S-28,756 dated June 14, 2005, the Board granted Verizon Hawaii, Inc. a perpetual easement to maintain a fiber optic cable on the HELCO utility poles. The set-aside to DOT of the road right-of-way will need to be made subject to these utility easements.

Conservation District Use Permit HA-3483, covering the Saddle Road improvements between mileposts 19 and 11 and the subdivision of the land, imposes a number of conditions on DOT. Staff has made the compliance with the permit a condition of the approval of the subject set-aside and special use permit. As the subject land is part of the Hilo Forest Reserve, the Division of Forestry and Wildlife will issue a special use permit in lieu of a right-of-entry, in accordance with its rules.

An immediate construction and management special use permit for the new road right-of-way will allow DOT and its contractors to conduct necessary surveys and commence construction. DOT has requested that the special use permit remain in effect until the executive order setting aside the land to DOT is finalized.

Staff notes that the Roadway Plan and Profile designates a number of areas outside of the new road right-of-way (but adjacent to it) as "Temporary Construction Easement" areas. DOT explains that it will need access to these areas during construction of the new highway, but that they will not be a part of the right-of-way upon completion of construction. Staff believes that the best approach to granting access to these areas is through a construction special use permit that will last until completion of construction and acceptance of the highway by DOT and the Federal Highways Administration.

In light of the existence of Saddle Road in this the area, staff is of the opinion that the highest and best use of the subject land is for public highway purposes. Staff further believes that the proposed use fully utilizes the requested land.

By request dated April 15, 2009, staff solicited comments on a draft of this submittal from several State and County agencies, as well as from HELCO and Hawaiian Telcom, Inc. (as the successor to Verizon Hawaii, Inc.), with the following results:

| Agency | Date Received | Response |
|---|---------------|--|
| DLNR – Division of Forestry and Wildlife | Various | Request changes to draft submittal to include legal references specific to DOFAW, requirement for public hearing on withdrawal of land from forest reserve, and issuance of special use permit in lieu of right-of-entry |
| Department of Transportation, Highways Division | 4/27/09 | No comments |
| Department of Hawaiian Home Lands | NA | No response |
| Office of Hawaiian Affairs | NA | No response |
| Planning Department, County of Hawaii | NA | No response |
| Department of Public Works, County of Hawaii | NA | No response |
| Hawaii Electric Light Co., Inc. | NA | No response |
| Hawaiian Telcom, Inc. | NA | No response |

DOFAW's requested changes were incorporated into the final submittal.

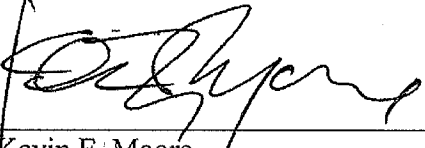
RECOMMENDATION: That the Board

1. Approve of and recommend to the governor issuance of an executive order withdrawing the lands required for the Saddle Road – East Side Milepost 19 to 11 Project from the Governor's Proclamation dated January 3, 1923 and subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and

- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. Approve of and recommend to the governor the issuance of an executive order setting aside the lands required for the Saddle Road – East Side Milepost 19 to 11 Project to the Department of Transportation under the terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 3. Grant an immediate construction and management special use permit to the Department of Transportation, its consultants, contractors, and/or persons acting for or on its behalf, onto the subject lands under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current construction and management special use permit form, as may be amended from time to time;
 - B. This special use permit is effective upon Land Board approval and shall continue until the executive order document is issued; and
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this special use permit is in force.
- 4. Grant an immediate construction special use permit to the Department of Transportation, its consultants, contractors, and/or persons acting for or on its behalf, onto all "Temporary Construction Easement" areas noted on the Roadway Plan & Profile dated February 9, 2009 for the Milepost 19 to 11 road improvements, as may be amended from time to time, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

- A. The standard terms and conditions of the most current construction special use permit form, as may be amended from time to time;
 - B. This special use permit is effective upon Land Board approval and shall continue until completion of construction and acceptance of the project by the State Department of Transportation and the Federal Highways Administration; and
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this special use permit is in force.
5. Grant the Division of Forestry and Wildlife permission to conduct a public hearing on the Island of Hawaii regarding the proposed withdrawal from the Hilo Forest Reserve and Hilo Restricted Watershed, Tax Map Keys 3rd/2-6-18:04 por. and 2-6-18:10 por., and further authorize the Chairperson to:
- A. Set the date and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura. H. Thelen, Chairperson

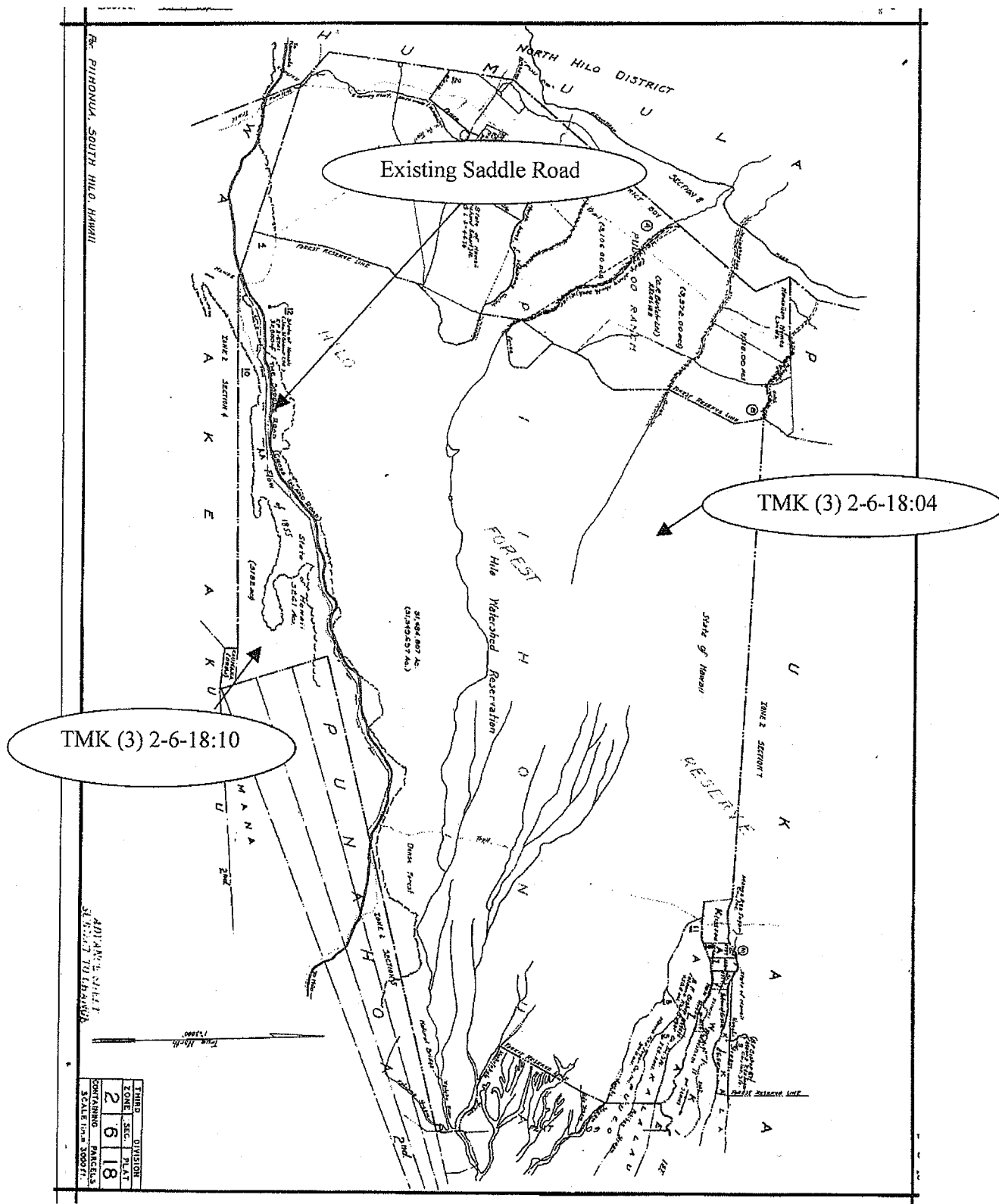


EXHIBIT A

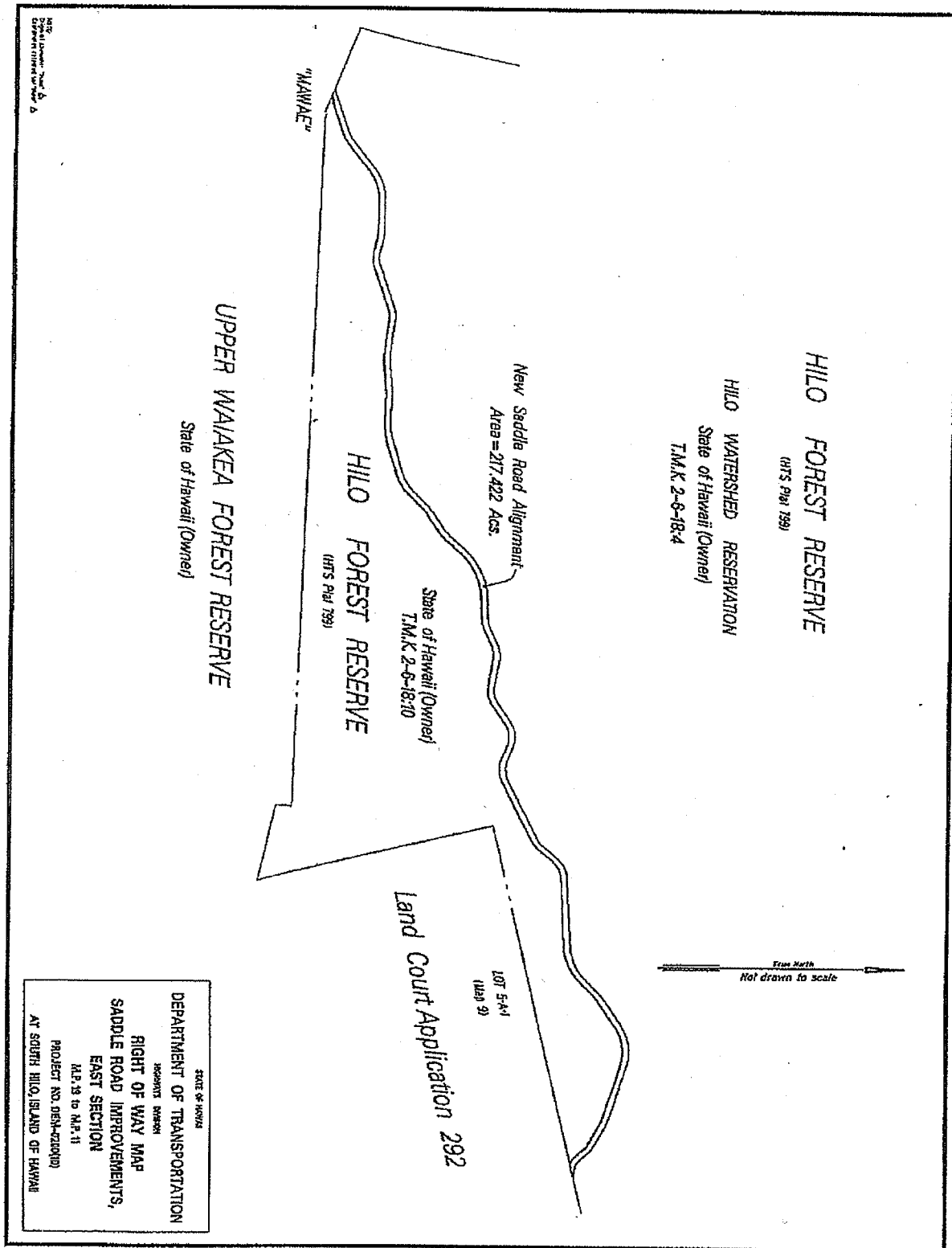


EXHIBIT B